

EXHIBIT 62

Richter, Elizabeth

December 7, 2007

Washington, DC

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B. Saris
the Florida Keys, Inc.)
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

Videotaped deposition of ELIZABETH RICHTER

Washington, D.C.

Friday, December 7, 2007

9:00 a.m.

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<p>1 average price being paid by customers was, you 2 would agree with me that if that had been 3 Congress' command to the agency the agency would 4 have attempted to implement that command, 5 correct?</p> <p>6 MR. DRAYCOTT: Objection. You can 7 answer.</p> <p>8 A. If they had explicitly instructed us to 9 survey -- I'm sorry. I'm not --</p> <p>10 Q. Let me ask it in a different way. Do 11 you have Judge Saris' opinion there in front of 12 you?</p> <p>13 A. I do.</p> <p>14 Q. What exhibit number is that?</p> <p>15 A. Exhibit Abbott 389.</p> <p>16 Q. Exhibit Abbott 389. Do you see at the 17 bottom of page 39 Judge Saris says the court 18 concludes the statutory term AWP to mean "The 19 average price at which wholesalers sell drugs to 20 their customers, including physicians and 21 pharmacies."</p> <p>22 A. Yes.</p>	<p>1 statute to mean, right?</p> <p>2 A. Yes.</p> <p>3 Q. And you'll agree with me that from 4 Louis B. Hays through Dr. Vladek through Ms. Min 5 DeParle through Mr. Scully, through the 6 information you've looked at no administrator 7 thought that published AWPs represented the 8 average price at which wholesalers sold drugs to 9 their customers, correct?</p> <p>10 MR. DRAYCOTT: Objection.</p> <p>11 A. That is what their testimony says, yes.</p> <p>12 But again, without seeing the full context. But 13 yes, that's what it says.</p> <p>14 Q. As a fair to assume that if Congress 15 had never used the word average wholesale price, 16 that if Congress had said, Dr. Vladek, Ms. 17 DeParle, I want you to pay providers the average 18 price at which wholesalers sell drugs to their 19 customers, that the last place they would have 20 looked would have been in compendia for AWPs?</p> <p>21 MR. DRAYCOTT: Objection.</p> <p>22 A. I have no -- I can't step in their</p>
<p>1 Q. If Congress had instructed CMS to pay 2 95 percent of "The average price at which 3 wholesalers sell drugs to their customers, 4 including physicians and pharmacies," do you have 5 any reason to believe that CMS would have 6 implemented that statutory command by looking up 7 AWPs in the compendia?</p> <p>8 MR. DRAYCOTT: Objection. You can 9 answer.</p> <p>10 A. I think that's what HCFA did. And I 11 can't say other than by the information in the 12 regulations and the preambles -- I can't say what 13 the correction was. And it seems to me that we 14 make decisions every day about how to implement 15 something based on the resources available to 16 implement that program and the other commitments 17 of the agency. And we don't live in a world of 18 perfect information. And so the decision was 19 made to use the compendia AWPs.</p> <p>20 Q. You'll agree with me that the agency 21 implemented the statute as it understood the 22 statute -- in good faith, what it understood the</p>	<p>1 shoes and figure out where they would have looked 2 or not looked.</p> <p>3 Q. Vaccines are paid based upon the 4 current published AWPs, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Currently is the agency undertaking any 7 effort to determine what the average price is at 8 which wholesalers are selling drugs to their 9 customers other than by looking it up in 10 compendia?</p> <p>11 MR. DRAYCOTT: Objection. You can 12 answer.</p> <p>13 A. Not to my knowledge, no.</p> <p>14 Q. So do you understand today to be the 15 statutory command to pay average wholesale price 16 to be satisfied by looking it up in the 17 compendia?</p> <p>18 MR. DRAYCOTT: Objection.</p> <p>19 A. Yes.</p> <p>20 Q. Do you understand that Congress had 21 ordered you to pay the average price at which 22 wholesalers are selling vaccines to their</p>

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